



## The Commonwealth of Massachusetts

### OFFICE OF THE DISTRICT ATTORNEY FOR THE NORFOLK DISTRICT

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May 1, 2019

The Honorable Paula M. Carey  
Chief Justice of the Trial Court  
John Adams Courthouse  
One Pemberton Square - 1M Floor  
Boston, MA 02108

Dear Judge Carey:

I am writing to you again to express my grave concern with the Sentencing Commission's actions. The Massachusetts Judiciary, specifically the Superior Court, has implemented and is using sentencing guidelines that violate Massachusetts General Law.

Massachusetts General Laws Chapter 211E, sec. 3(a)(1) states: “[t]he commission, by affirmative vote of at least six members of the commission and consistent with all pertinent provisions of this chapter and existing law, shall recommend sentencing guidelines, which shall take effect only if enacted into law.” (emphasis added). To date, no sentencing guideline recommendations have been sent nor enacted by the Legislature. No action has taken place despite District Attorney representatives on the Commission repeatedly advising then-Chairman, Judge John Lu, of the Commission's obligation to report their sentencing guideline recommendations to the Legislature.

Recently, the Social Law Library held “A View From the Bench” which featured a panel of two Superior Court judges, who emphatically told attending lawyers that they should be prepared to cite the guidelines in their sentencing memoranda. The Flaschner Judicial Institute has even distributed and trained judges on these guidelines that, again, have not been approved by the Legislature. A majority of District Attorneys join me in objecting to the Judiciary continuing to publish, train, and expect attorneys in the Commonwealth to make arguments and presentations on sentencing decisions based upon guidelines that have not been approved by the Legislature.

Members of the Judiciary have taken an oath to follow the law. Here, that law reserves unto the Legislature the power to approve any sentencing guidelines. The court must follow the law and stop using these unapproved sentencing guidelines until they are enacted by the Legislature.

The continued actions by the Judiciary to ignore and violate the law requires that I write this letter and demand that you cease-and-desist using the sentencing guidelines until they are approved by the Legislature. An immediate order to cease use and reliance on the draft sentencing guidelines will help restore the public confidence in the integrity of the Judiciary.

Sincerely,



Michael W. Morrissey  
District Attorney

cc: Governor Charles D. Baker Jr.  
Attorney General Maura Healey  
State Auditor Suzanne M. Bump  
Chief Justice Ralph D. Gants  
Justice Judith Fabricant  
Justice Paul C. Dawley  
Justice Amy L. Nechtem  
Justice Jeffrey A. Locke, Chair Sentencing Commission  
Commissioner Edward J. Dolan, Probation  
Speaker Robert A. DeLeo, MA House  
Senate President Karen E. Spilka, MA Senate  
Representative Claire D. Cronin, Chair Judiciary Committee  
Senator James B. Eldridge, Chair Judiciary Committee